

(cc. DEF.
(cc. J.A.O.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

IAN GARRICK,
Defendant

Case No. F07-25346
F07-25341
Judge COLODNY

FILED FOR RECORD
2011 MAR 11 PM 4:03
CLERK OF CIRCUIT COURT
ELEVENTH JUDICIAL CIRCUIT
MIAMI, FLORIDA

**ORDER DENYING DEFENDANT'S MOTION FOR POST CONVICTION RELIEF
PURSUANT TO FLORIDA RULE OF CRIM. P 3.850**

THIS CAUSE, having come on to be heard before the Court on the Motion of Defendant Ian Garrick for Post Conviction Relief, and the Court after considering the Motion as well as reviewing the court file, and being otherwise advised on the premises, it is hereby:

ORDERED AND ADJUDGED that the Defendant's Motion for Motion for Post Conviction Relief Pursuant to Florida Rule of Crim. P 3.850 is denied based on the following:

In his motion, the defendant states that his plea should be vacated because his attorney failed to advise him of the immigration consequences of the plea. The record indicates that the defendant was in fact informed of the possible immigration consequences of his plea and, thus, the defendant's motion should be denied.

In determining the voluntariness of a plea, the court is required to make sure the defendant understands that, if he pleads guilty or nolo contendere and he is not a United States citizen, the plea may subject him to deportation. Fl. R. Crim. Pro. 3.172 (c) (8).

In the instant case, the defendant was placed under oath and specifically asked if he understood that, if he was not a United States citizen, he could be deported because of the plea. See Transcript of Plea Colloquy attached hereto as Exhibit A at 7. The defendant indicated that he understood that deportation was a possible consequence. *Id.* at 8. The Court found that the defendant entered the plea knowingly and voluntarily. *Id.* at 9.

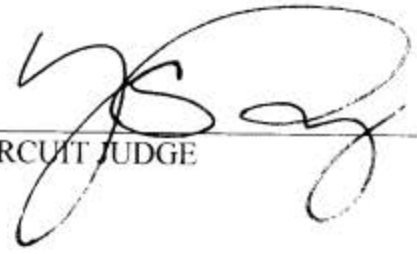
WHEREFORE, based upon the foregoing the defendant's motion is denied.

The defendant, Ian Garrick, is hereby notified that he has the right to appeal this order to the District Court of Appeal of Florida, Third District within thirty (30) days of the signing and filing of this order.

In the event that the defendant takes an appeal of this order, the Clerk of this Court is hereby ordered to transport, as part of this order, to the appellate court the following:

1. Defendant's Motion
2. The State's Response
3. This order.

DONE AND ORDERED at Miami, Miami-Dade County, Florida, this the 28th
day of March, 2011.


CIRCUIT JUDGE

cc: Natalie Snyder
Ian Garrick

I CERTIFY that a copy of this order has been transmitted to
the MOVANT, Ian Garrick by mail this _____ day
of APR 11 2011, 20



EXHIBIT A

ASA Natalie Snyder

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IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: F07025341, F07025346

JUDGE: EIG

STATE OF FLORIDA,

Plaintiff,

vs.

IAN GARRICK,

Defendant.

PLEA COLLOQUY

January 7, 2009

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The above-styled cause came on for hearing before the HONORABLE SPENCER EIG, one of the Judges in the Circuit Court of the 11th Judicial Circuit, at the Richard E. Gerstein Justice Building, 1351 N.W. 12th Street, Miami, Florida on Wednesday, January 7, 2009, commencing at or about 9:15 a.m. and the following proceedings were had:

Reported by: Amber N. Gabel

APPEARANCES:

OFFICE OF THE STATE ATTORNEY, by,

TAMA KOSS, ASA

On behalf of the Plaintiff

SCHWARTZ AND ASSOCIATES, by,

YEHUDA BRUCK, ESQUIRE

On behalf of the Defendant

- - - - -

1 **THE COURT:** Are you ready, Mr. Bruck?

2 **MR. BRUCK:** Yes, Judge.

3 **THE COURT:** Ian Garrick bottom of Page 13.

4 **MR. BRUCK:** Yehuda Bruck on his behalf.

5 **MS. KOSS:** Good morning, your Honor. Tama
6 Koss on behalf of the State.

7 At this time, I'm filing a plea agreement
8 signed by the defendant.

9 **THE COURT:** Mr. Garrick, would you raise your
10 right hand.

11 (Thereupon, IAN GARRICK was duly sworn by the
12 Court.)

13 **THE COURT:** Mr. Garrick, I have in front of
14 me a document that's been handed to me, and it has
15 your name on it, State of Florida versus Ian Garrick.
16 It's a plea agreement that contains 40 paragraphs.

17 Have you read through each of the 40
18 paragraphs yourself?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Have you had an opportunity to
21 discuss this with your attorney?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** At the bottom of each page are
24 your initials "I.G.," and on the last page there's a

25 signature that purports to be yours.

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1 Is it your initials on each page and your
2 signature on the last page?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** And by entering these initials
5 and this signature, is it your intention to be bound
6 by the 40 paragraphs of this plea agreement?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** Good morning, counsel.
9 What's your name?

10 **MS. PICO:** Michelle Pico, attorney from the
11 guardian program.

12 **THE COURT:** And, Ms. Pico, have you had an
13 opportunity to see this plea agreement?

14 **MS. PICO:** I spoke to Ms. Tamara about it,
15 and --

16 **THE COURT:** Let's keep going.

17 Mr. Garrick, would you state your full name
18 and date of birth, please.

19 **THE DEFENDANT:** Ian Garrick, 4/27/65.

20 **THE COURT:** Mr. Garrick, how do you plead to
21 the offense of lewd and lascivious molestation on a
22 minor and attempted sexual battery on a minor?

23 **THE DEFENDANT:** No contest.
24

24 THE COURT: The plea agreement does not -- I
25 don't know.

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1 MS. KOSS: I'm sorry, I didn't hear it.

2 THE COURT: The plea that Mr. Garrick stated
3 was no contest. I see in the plea agreement, in
4 Paragraph 2, says he must enter a plea of guilty to
5 those charges, so --

6 MS. KOSS: Yeah, he must plead guilty. It's
7 right there.

8 THE COURT: Mr. Bruck, does Ms. Koss care
9 whether it's not guilty, guilty, or no contest?
10 Does Mr. Garrick care whether it's four years
11 or five?

12 I mean, these are the provisions of the plea
13 agreement.

14 MR. BRUCK: I hear you. I just didn't
15 realize -- I mean, if he can plead guilty for
16 convenience, I would like that he does that.

17 THE COURT: Let me repeat the colloquy to
18 Mr. Garrick as to what he pleads.

19 Mr. Garrick, just so we're clear, I'm going
20 to ask you again, how do you plead to the charges of
21 attempted lewd and lascivious molestation on a minor
22 and attempted sexual battery on minor?

23 THE DEFENDANT: Guilty.

24 **THE COURT:** Do you understand, sir, that you
25 do not have to plead guilty to these charges if you

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1 don't want to. You have the right to have a trial by
2 jury, the State would have to prove you guilty beyond
3 a reasonable doubt. You would have the right to
4 appeal to a higher court if you were not successful at
5 that trial --

6 **THE DEFENDANT:** Yes.

7 **THE COURT:** -- but by entering into this
8 plea, you're giving up your right to a trial and and
9 appeal.

10 Do you understand that?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** You understand that this going to
13 close the case against you? The State is not going to
14 test the evidence for DNA or drugs or anything else,
15 and your attorney is not going to continue
16 investigating any defenses on your behalf. The case
17 will be closed today.

18 Do you understand that, Mr. Garrick?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Is there anything that you've
21 asked your attorney to do that you want him to do
22 before you enter your plea today and close the case?

23 **THE DEFENDANT:** (Nodding his head).
24 **THE COURT:** You have to answer out loud.
25 **THE DEFENDANT:** Yes.

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1 **THE COURT:** What is it that you want him to
2 do before you close the case today?

3 **THE DEFENDANT:** I am (inaudible) my
4 step-daughter -- when I get out of jail, my
5 step-daughter will still be living to my house, and I
6 would ask (inaudible) at my house.

7 **MR. BRUCK:** And that is the plea (inaudible)
8 he'll have to get permission from the therapist to
9 make a determination, at the recommendation of the
10 Court, at that time that should be come an issue, and
11 the Court and the state attorney office knows that the
12 clinician and the phycologist will make a
13 determination about whether that's appropriate, and
14 that is something (inaudible) at this point, Judge.

15 **THE COURT:** Do you understand that,
16 Mr. Garrick?

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** So is there anything that needs
19 to be done now before you enter your plea that you
20 want your attorney to do?

21 **THE DEFENDANT:** No.

22 **THE COURT:** Do you understand that if you're
23 not a US citizen, you could be deported because of
24 this plea, or detained by the US immigration
25 authority?

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1 **THE DEFENDANT:** Yes.

2 **THE COURT:** Are you pleading guilty because
3 you are, in fact, guilty?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** Has anybody promised you anything
6 or threatened you to get you to enter into this plea?

7 **THE DEFENDANT:** No.

8 **THE COURT:** Are you under the influence today
9 of any drugs, medication, alcohol, or mental illness
10 that affect your ability to understand this decision?

11 **THE DEFENDANT:** No.

12 **THE COURT:** Do you understand that you will
13 be required to register as a sexual predator pursuant
14 to Florida statutes?

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** Do you understand that you may be
17 subjected to involuntary civil commitment proceedings
18 upon the completion of your prison sentence?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** You understand that you have to
21 be sentenced, pursuant to this plea agreement, to four

22 years in the state prison followed by ten years
23 probation?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** If you violate your probation

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1 either by committing another crime, or by failing to
2 follow the rules of probation, including not entering
3 and successfully completing mental disorder sex
4 offender treatment probation, then your probation can
5 be revoked and you can be sentenced to the maximum
6 term of imprisonment that these offenses carry.

7 Ms. Koss, what is the maximum period of
8 imprisonment that Mr. Garrick might face if he
9 violates his probation?

10 **MS. KOSS:** It would be 45 years.

11 **THE COURT:** Do you understand that,
12 Mr. Garrick?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Do the attorneys stipulate that
15 there is factual basis for the plea?

16 **MS. KOSS:** Yes, your Honor.

17 **MR. BRUCK:** Yes.

18 **THE COURT:** The Court finds there is a
19 factual basis for the plea, and Mr. Garrick has
20 entered this plea knowingly, intelligently, and

21 voluntarily, and upon the advice of competent counsel.
22 The Court adjudicates Mr. Garrick guilty of -- have
23 these two charges been filed, or are these the charges
24 that are in the information?

25 **MS. KOSS:** Yeah, we amended the information.

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1 The information was sexual battery and lewd and
2 lascivious molestation, but if he pleads guilty to
3 avoid the minimum/mandatory --

4 **THE COURT:** He has plead guilty, and I have
5 to have a new information pending to adjudicate him.

6 **MS. KOSS:** Right, I'm just amending the
7 charges on the information.

8 **THE COURT:** Well, go ahead.

9 I adjudicate Mr. Garrick guilty of the
10 amended information charging attempted lewd and
11 lascivious molestation and attempted sexual battery on
12 a minor child. I sentence Mr. Garrick, as to each
13 count, to four years in the Florida state prison
14 followed by ten years probation, each count to run
15 concurrent, with the special condition the defendant
16 participate in and successfully complete a mentally
17 disordered sexual offender treatment program. The
18 defendant waive the privilege of confidentially
19 (inaudible).

20 Are there any other special conditions of
21 probation?
22 **MS. KOSS:** Judge, the plea agreement has all
23 the conditions.
24 **THE COURT:** The Court is entering an order
25 adopting the plea agreement -- ordering that the plea

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1 agreement -- the provision of the plea agreement be
2 made a special condition of probation. Further I'm
3 entering an order now of -- finding the defendant a
4 sexual predator. I'll reduce the cost of supervision
5 to \$50 a month.

6 Anything else from the State?

7 **MS. KOSS:** No, your Honor.

8 **THE COURT:** Anything else from the guardian?

9 **MS. PICO:** No, your Honor.

10 **THE COURT:** Anything else from the defense?

11 **MR. BRUCK:** Just a -- I spoke to Ms. Koss
12 about a provision in there that states that he can't
13 live within in 2,500 feet of a school or park, and I
14 told counsel that, if, in the event that it's found
15 unconstitutional that it be deleted from the
16 (inaudible), and we'll come back (inaudible), so
17 that's the only provision that if it's been found to
18 be unconstitutional that it be removed from the plea
19 agreement.

20 **THE COURT:** Well, State, what's your position
21 on that one?

22 **MS. KOSS:** Nothing has been found
23 unconstitutional, so it's a provision of the plea
24 agreement at this point.

25 **MR. BRUCK:** What I'm trying to avoid is if

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1 it's found unconstitutional, and then the State will
2 say, "Well, forget the constitution, he agreed to it
3 in this plea."

4 **THE COURT:** Right.

5 **MR. BRUCK:** I want to say that the plea -- at
6 the state of the world today that it is
7 constitutional, so if the world changes and it becomes
8 unconstitutional, that the plea agreement say 1,000
9 feet.

10 **THE COURT:** Are you speaking to me or to
11 Ms. Koss, because this agreement between the State and
12 Mr. Garrick? I'm not going to vary elements from this
13 plea agreement, you know, often --

14 **MR. BRUCK:** Will the State agree that if it's
15 declared unconstitutional it will be a 1,000 feet?

16 **MS. KOSS:** Yes, your Honor. If the statute
17 is declared unconstitutional in the future, then the
18 plea agreement will be amended.

19 **MR. BRUCK:** It makes a big difference, Judge,
20 because a 1,000 --

21 **THE COURT:** I just wanted the parties to
22 agree to that.

23 **DEPARTMENT OF CORRECTIONS:** That's with all
24 CTS, right, your Honor?

25 **THE COURT:** With all CTS.

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1 Thank you, Ms. Koss.

2 **MS. KOSS:** Thank you, your Honor.

3 **THE COURT:** Thank you, Mr. Bruck.

4 **MR. BRUCK:** Thank you, your Honor.

5 (Whereupon, the hearing was concluded.)
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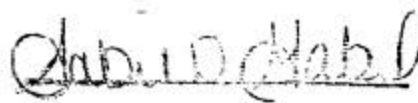
CERTIFICATE

STATE OF FLORIDA:

COUNTY OF MIAMI-DADE:

I, Amber N. Gabel, Shorthand Reporter and
Notary Public for the State of Florida at large, do
hereby certify that the foregoing proceedings were
taken before me at the date and place as stated in
the caption hereto on Page 1; that the foregoing
computer aided transcription is a true record of my
stenographic notes taken at said proceedings.

WITNESS my hand this 29th day of June, 2010.



Amber N. Gabel

Court Reporter and Notary Public
in and for the State of Florida

Commission Number DD721399

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